IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

MFA.No. 581 of 2000()

OPMV.146/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANTS: PETITIONERS IN OP.(MV)
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1. **JAMES P., AGED 48 YEARS, S/O. PETER, VARAVILA PUTHENVEEDU, RESIDING AT KAKKOOTTUMOOLA DESOM, MAYYANAD VILLAGE MAYYANAD P.O., KOLLAM TALUK.**

2. **MABEL JAMES, AGED 46 YEARS, W/O. JAMES VARAVILA PUTHENVEEDU, DO. DO.**

3. **IGNATIUS LAYOLA, AGED 10 YUEARS, S/O. JAMES, MINOR REP.BY NEXT FRIEND AND GUARDIAN FATHER JAMES, RESIDING AT VARAVILA PUTHENVEEDU, KAKKOTTUMOOLA DESOM, DO. DO.**

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: RESPONDENTS
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1. **PARTNER, POPULAR AUTOMOBILES, 1566/2 CHURCH ROAD, KASHMIR GATE, DELHI 6.**

2. **VINCENT, S/O. MURINGATHERI KOCHOUSEPH, ERUMAPETTI DESOM, KARUVANNUR VILLAGE, THRISSUR DISTRICT.**

**3. MANAGER, OREINTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE NO.1, JOSE ANNEXE,
M.G.ROAD, ERNAKULAM , COCHIN 682 011.**

**BY ADV. SRI.VARGHESE C.KURIAKOSE - R1
SRI.MATHEWS JACOB (SR.) - R3
SRI.P.JACOB MATHEW**

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.581 OF 2000 (D)

Dated 1st August, 2007

JUDGMENT

Koshy, J.

A 21 year old youngster employed in Mc.Dowell Company Ltd. died in a motor accident. His father, mother and brother filed an application for compensation claiming an amount of Rs.7,00,000/-. Tribunal calculated an amount of Rs.2,21,250/- and it was found that the deceased was also negligent and 40% negligence was attributed to him. Therefore 40% of the compensation was deducted. Only balance was awarded to be paid by the Insurance company of the offending vehicle. The findings regarding negligence as well as quantum of compensation was disputed in the appeal. The question of negligence was considered by the tribunal at paragraph 17 of the award. Considering the evidence adduced, contributory negligence on the motor accident victim was found by the tribunal. The accident occurred from the western side of the tarred road and the distance from the place of accident to the western tar end is noted in Ext.B2 as 120 cms and the motor cycle was found on the western side about 192 cms away from the western tar end and it was found

that trailer was in its correct side and accident occurred because of the sudden turning of the motor cycle by the deceased. On the basis of the evidence, we see no ground to change the above.

3. The next question is regarding the quantum of compensation. On the basis of the salary certificate, tribunal calculated Rs.2,500/- as the monthly income and Rs.1,500/- as the monthly contribution to family. His father was 42 and mother was 40 at the time of accident. Going by the 2nd schedule, 15 is the apt multiplier, and if that be so, compensation payable will be Rs.1,500 x 12 x 15 = Rs.2,70,000/-. It is contended by the learned counsel for the Insurance company that there is chance to reduce the dependency amount and after 11 years there is likelihood of marriage. Certificate produced shows that he passed 10 + 2 examination and got appointment on such quota. He won first prize in Discus Throw, Foot ball and Basket Ball. He secured first place for Drama competition and Group Dance. We note that considering the prospects in employment, the monthly income was not increased. It is true that after marriage, percentage of dependency benefits given to the parents will be diminished. But at the same time in view of the prospects in employment the salary

would have been increased. So it is proper to consider the compensation on the basis of the multiplier method taking guideline from the 2nd schedule. Tribunal has granted dependency compensation as only Rs.1,26,000/-. So the additional amount of compensation for loss of dependency will be Rs.1,44,000/-. Out of which 40% will have to be deducted and 60% can be awarded as compensation. Thus the additional amount will be Rs.86,400/-. The above amount should be deposited by the 3rd respondent Insurance company with 8% interest from the date of application till deposit over and above the decreed amount by the tribunal. This appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.581 OF 2000 (D)

JUDGMENT

Dated 1st August, 2007